



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: OCTOBER 06, 2022

IN THE MATTER OF:

Appeal Board No. 623749

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 623749, 623750 and 623751, the claimant appeals the decisions of the Administrative Law Judge filed May 11, 2022 which sustained the initial determinations holding the claimant

ineligible to receive benefits, effective May 11, 2020 through May 17, 2020, on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation; charging the claimant with an overpayment of \$128 in benefits recoverable pursuant to Labor Law § 597 (4),

\$600 in Federal Pandemic Unemployment Compensation recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$109.20 on the basis that the claimant made a willful misrepresentation to obtain benefits.

In Appeal Board Nos. 623752, 623753 and 623754, the claimant appeals the decisions of the Administrative Law Judge filed May 11, 2022, insofar as they sustained the modified determinations holding the claimant ineligible to receive benefits, effective December 5 and 6, 2020, on the basis that the claimant was not available for employment; and charging the claimant with an overpayment of \$128 in benefits recoverable pursuant to Labor Law § 597 (4);

and sustained the initial determination reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to

obtain benefits.

In Appeal Board Nos. 623755, 623756 and 623757, the claimant appeals the decisions of the Administrative Law Judge filed May 11, 2022, insofar as they sustained the initial determination holding the claimant ineligible to receive benefits, effective December 7, 2020 through December 20, 2020, on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation; and sustained the modified determinations charging the claimant with an overpayment of \$64 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right to receive future

benefits by eight effective days and charging a civil penalty of \$100 on the basis that the claimant made a willful misrepresentation to obtain benefits.

The Administrative Law Judge held a combined telephone conference hearing at which testimony was taken. There was an appearance on behalf of the claimant.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determinations. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

In Appeal Board Nos. 623752, 623753 and 623754, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made concerning the issues of availability, overpayment of benefits, willful misrepresentation and monetary penalty. The findings of fact and opinion of the Administrative Law Judge are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

In Appeal Board Nos. 623755, 623756 and 623757, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made concerning the issues of not totally unemployed, overpayment of benefits, willful misrepresentation and monetary penalty. The findings of fact and opinion of the Administrative Law Judge are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

In Appeal Board Nos. 623749, 623750 and 623751, our review of the record reveals that the case should be remanded to hold a hearing. At the prior hearing, the claimant contended that she did not certify for benefits for week

ending May 17, 2020, and the benefits that she received in May were paid for a prior certification in April 2020. As the Commissioner of Labor was not on notice of this new information, we have determined that a further hearing is necessary to give the Commissioner of Labor an opportunity to present testimony and evidence in this regard before the issue total unemployment, recoverable overpayment, willful misrepresentation and monetary penalty can be decided.

At the remand hearing, the Commissioner of Labor shall be given an opportunity to cross-examine the claimant's prior testimony, and to object to the documents previously entered into evidence. The Commissioner of Labor shall also provide testimony and evidence in regard to how the Certification Record Report is created; what information it documents; how that information is collected, stored, and retrieved; and how the date of certification is directly related to certain benefits released.

The parties may produce any other relevant witnesses or documents. The Administrative Law Judge shall take any additional testimony and evidence necessary to decide the case.

DECISION: In Appeal Board Nos. 623752, 623753 and 623754, the decisions of the Administrative Law Judge are affirmed.

The initial determinations, as modified, holding the claimant ineligible to receive benefits, effective December 5 and 6, 2020, on the basis that the claimant was not available for employment; and charging the claimant with an overpayment of \$128 in benefits recoverable pursuant to Labor Law § 597 (4);

and sustained the initial determination reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

In Appeal Board Nos. 623755, 623756 and 623757, the decisions of the Administrative Law Judge, are affirmed.

The initial determinations, as modified, holding the claimant ineligible to receive benefits, effective December 7, 2020 through December 20, 2020, on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation; and charging the claimant with an

overpayment of \$64 in benefits recoverable pursuant to Labor Law § 597 (4);

and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$100 on the basis that the claimant made a willful misrepresentation to obtain benefits, are sustained.

The claimant is denied benefits with respect to the issues decided herein.

In Appeal Board Nos. 623749, 623750 and 623751, the decisions of the Administrative Law Judge, insofar as it sustained the initial determinations holding the claimant ineligible to receive benefits, effective May 11, 2020 through May 17, 2020, on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation; charging the claimant with an overpayment of \$128 in benefits recoverable pursuant to Labor Law § 597 (4), \$600 in Federal Pandemic Unemployment

Compensation recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$109.20 on the basis that the claimant made a willful misrepresentation to obtain benefits, are rescinded.

Now, based on all of the foregoing, it is

ORDERED, that in Appeal Board Nos. 623749, 623750 and 623751, the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of not totally unemployed, ineligibility to accrue effective days, recoverable overpayment of regular benefits and FPUC benefits, and willful misrepresentation and monetary penalty, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issues of not totally unemployed, recoverable overpayment of regular benefits and FPUC benefits, and willful misrepresentation and monetary penalty, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, on the remanded issues only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER